BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 1999-178-C - ORDER NO. 2000-0375

JUNE 22, 2000

IN RE: Petition to Review the Earnings of BellSouth Telecommunications, Inc. for Calendar Years 1996, 1997, and 1998.	)	ORDER DENYING PETITIONS FOR REHEARING AND/OR RECONSIDERATION

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the Commission) on Petitions for Rehearing and/or Reconsideration of our Order No. 2000-030 filed by the Consumer Advocate for the State of South Carolina (the Consumer Advocate), MCI WorldCom Network Services, Inc. (MCI), the South Carolina Cable Television Association (SCCTA), and AT&T Communications of the Southern States, Inc. (AT&T). Because of the reasoning stated below, all Petitions must be denied.

Our Order No. 2000-030 denied the Petition of the Consumer Advocate for an earnings review of BellSouth Telecommunications, Inc. (BellSouth) for the calendar years 1996, 1997, and 1998. The purpose of the requested review, according to the Consumer Advocate, was to determine "appropriate refunds for earnings in excess of a lawful rate of return and rate reductions going forward." See Order No. 2000-030 for a complete procedural history.

II. PETITION OF THE CONSUMER ADVOCATE

The Consumer Advocate filed a Petition for Reconsideration of Order No. 2000-030, based on several grounds.

A. Ground One

The Consumer Advocate first alleges that after the South Carolina Supreme Court reversed the Commission's decision allowing BellSouth to operate under the terms of a plan of alternative regulation under S.C. Code Ann. Section 58-9-575 (Supp. 1999), the Commission should have gone back to rate of return regulation for BellSouth for the period, since BellSouth began operation under the alternative regulation plan in 1996. The Consumer Advocate asserts that "by allowing BellSouth to proceed with alternative regulation under § 58-9-576 ... without first conducting an earnings review to determine the need for refunds or rate reductions is a less onerous mode of regulation for BellSouth than if it had to continue its operations under § 58-9-575 until the plan expired at the end of the year 2000." Petition for Rehearing and Reconsideration of Consumer Advocate at 2. The problem with the Consumer Advocate's position is that it ignores the will of the General Assembly as expressed in S.C. Code Ann. Section 58-9-576 (Supp.1999).

After the Commission approved BellSouth's Plan under Section 58-9-575, the General Assembly enacted a new law, § 58-9-576, which allows any company not already operating under an alternative regulation plan, to elect to be regulated under an alternative regulation plan by notifying the Commission of its intent to do so. See S.C. Code Ann. Section 58-9-576(b). Unlike § 58-9-575, moving to the regulatory framework under §58-9-576 does not require Commission approval. See S.C. Code Ann. Section 58-

9-576(B)(1). The only requirement to elect regulation under § 58-9-576 is that the electing company has entered into an interconnection agreement with another non-affiliated company and that the agreement has been approved by this Commission. S.C. Code Ann. Section 58-9-576(A). Section 58-9-576 further provides in subsection 7 that any company operating under an alternative regulatory plan approved prior to the effective date of § 58-9-576 must adhere to that plan until the plan expires or is terminated by the Commission.

Following the reversal of the Commission's decision by the Supreme Court and return of the Plan to the Commission by the Circuit Court on July 14, 1999, BellSouth filed, also on July 14, 1999, its notice electing to have its rates, terms, and conditions for its services regulated under the alternative form of regulation set forth in Section 58-9-576. Since the Court reversed the Commission's approval of the alternative regulation plan under § 58-9-575, that plan, as approved by the Commission, became null and void, pursuant to the Court's ruling. Thus, the 575 Plan ended, or was terminated by the Supreme Court.[1] Therefore, BellSouth's subsequent election of alternative regulation under § 58-9-576 was appropriate as, at the time of election, BellSouth was no longer under the 575 Plan.

To put BellSouth back under rate of return regulation, as suggested by the Consumer Advocate, would completely ignore the provisions of Section 58-9-576. The statute makes specific reference in subsection B to the point that any LEC may have its rates, terms, and conditions for its services determined pursuant to the plan described in

[1] See discussion of the effect of the Supreme Court reversal of the 575 plan on pages 45-47, infra.

the subsection, in lieu of other forms of regulation, including, but not limited to, rate of return or rate base monitoring or regulation, upon the filing of notice with the Commission.

The Consumer Advocate argues that the Commission should not have allowed BellSouth to proceed under regulation prescribed by Section 58-9-576 without conducting an earnings review. The difficulty with the Consumer Advocate's position is that there is no mechanism provided in the statute for such a review. Section 58-9-576 does not provide for an earnings review prior to a company's election of regulation under the provisions of § 58-9-576.

The words of a statute should be accorded their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operations. Estate of Guide v. Spooner, 318 S.C. 335, 457 S.E. 2d 623 (Ct. App. 1995) (Emphasis added). Section 58-9-576 (B)(2) states specifically that "on the date a LEC notifies the commission of its intent to elect the plan described in this section, existing rates, terms, and conditions for the services provided by the electing LEC contained in the then-existing tariffs and contracts are considered just and reasonable." Nothing in the statute provides for the earnings review requested by the Consumer Advocate. If the Legislature had intended this result, it would have said so. See Estate of Guide v. Spooner, supra. The case of Keyserling v. Beasley, 322 S.C. 83, 470 S.E.2d 100 (1996) holds that a court does not sit as a super legislature to second guess the wisdom or folly of the decisions of the General Assembly. Similarly, this Commission is in no position to second-guess the decisions of the legislature. Had the General Assembly provided for such a review in the

statute, an earnings review could have been conducted. However, absent direction in the statute, the Commission does not have the authority to conduct the requested earnings review at the time of election under 576. The Commission only has such authority as is granted to it by the legislature. South Carolina Cable Television Association v. Public Service Commission, 313 S.C. 48, 437 S.E. 2d 38 (1993).

The Consumer Advocate goes on to state that the Supreme Court in its opinion in Porter v. South Carolina Public Service Commission and BellSouth Telecommunications, Inc., 335 S.C. 157, 515 S.E. 2d 923 (1999) "could not have intended such an absurd result." See Petition for Reconsideration of the Consumer Advocate at 2-3. First of all, it is doubtful that the Supreme Court "intended" any result with regard to an election under § 58-9-576. The opinion of the Supreme Court in reversing the Commission's decision on the 575 Plan as contained in the Porter case interpreted the law as the law pertained to that case. The Supreme Court's opinion did not address, or consider, § 58-9-576, as § 58-9-576 was not relevant to the 575 case. The Supreme Court's opinion provided direction to the Commission on how to address another hearing on a 575 Plan if requested to approve a 575 Plan in a later proceeding. The Commission has not been requested to address another 575 Plan, but rather, has been asked to address an alternative form of regulation under 576. Thus, the guidance provided from the Porter case is of no bearing on the instant case.

In his argument, the Consumer Advocate refers to the fact that Order No. 2000-030 recognizes BellSouth's election under Section 58-9-576 without ordering an earnings review and without putting BellSouth back under rate of return regulation. The

Consumer Advocate's position completely ignores the effect of the passage of § 58-9-576. With the passage of § 58-9-576, the General Assembly manifested a clear intent to declare rates, terms, and conditions for services provided by the electing LEC contained in the then-existing tariffs and contracts to be just and reasonable on the date an electing LEC notifies the Commission of its intent to elect the plan of regulation referenced in § 58-9-576. See S.C. Code Ann. Section 58-9-576 (B)(2)(Supp. 1999). The language of § 58-9-576(B)(2), specifying that the rates and charges in the tariffs and contracts existing on the date of a LEC notifying the Commission of its intent to elect a 576 Plan are considered just and reasonable, is clear evidence that the General Assembly did not intend an earnings review prior to a LEC electing alternative regulation under 576. Had the General Assembly intended an earnings review to be conducted prior to a 576 election, the rates and charges in effect on the date of notice of the election could not be "considered just and reasonable" as the rates and charges would have to be verified by the earnings review. Thus, it is clear that the General Assembly in enacting S.C. Code Ann. Section 58-9-576 did not intend or provide for an earnings review prior to a 576 election. Therefore, this Commission cannot require an earnings review prior to a 576 election.

Had the General Assembly wanted to require an earnings review prior to a 576 election, it would have provided for one in the statute. For example, and as evidenced by the language in Section 58-9-576(7), the General Assembly did envision a company previously operating under an alternative regulatory plan to later come under the alternative regulatory plan provided for in § 58-9-576. Just as the General Assembly

envisioned and provided for a company operating under another alternative regulatory plan at the time of passage of 576 to subsequently seek alternative regulation under 576, the General Assembly could have provided for an earnings review prior to a company electing 576 alternative regulation if the General Assembly wanted an earnings review conducted prior to the election. If the Legislature had intended a certain result by or in the statute, it would have said so in the statute. See, Estate of Guide v. Spooner, supra. (It is reasonable to assume that if the Legislature had intended the statute to apply to both formal and informal proceedings, it would have said so either by stating that it applied to any testacy or appointment proceeding, or by expressly including informal proceedings in the first sentence.) To argue now that failure to conduct an earnings review prior to BellSouth's election under 576 being permitted is error and would require this Commission to add requirements to the election allowed by § 58-9-576 that are not envisioned by the statute. The words of a statute should be accorded their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operations. Estate of Guide v. Spooner, supra. The requirements for an election of alternative regulation under § 58-9-576 are clearly set forth in the statute, and an earnings review is not a requirement of an election under § 58-9-576.

Further, it should be recognized that BellSouth has reduced all rates previously increased during the time that BellSouth operated under the now reversed 575 Plan and has disgorged revenues above the revenues produced by the 1995 rates. The Commission by Order No. 1999-411, dated June 21, 1999, approved a Settlement Agreement between the Consumer Advocate and BellSouth wherein the Consumer Advocate and BellSouth

agreed, inter alia, to reduce charges for certain services for a period of sixty months beginning January 2000 and to prospectively adjust certain rates to the rates that were in effect on January 30, 1996.[2] The effect of the settlement agreement and the Commission's approval of the settlement agreement is that BellSouth's rates were reduced to pre-575 Plan levels and revenues received for rate increases under the 575 Plan were disgorged. [3] As will be seen later in this Order, BellSouth has no unaccounted for monies resulting from any price increases under the 575 Plan.

Taking into account the rationale for the Commission's denial of the Consumer Advocate's Petition, we believe that this Commission has not failed to give effect to the Supreme Court's decision in Porter v. South Carolina Public Service Commission and BellSouth Telecommunications, Inc., 335 S.C. 157, 515 S.E.2d 923 (1999) as alleged by the Consumer Advocate, but that this Commission has, in fact, ruled appropriately and in accordance with Section 58-9-576 by denying the Consumer Advocate's proposed earnings review.

B. Ground Two

Next, the Consumer Advocate states a belief that the Commission violated Article IX, Section 1 of the South Carolina Constitution by failing to provide for appropriate regulation of a public utility. The specifics of the Consumer Advocate's allegation are

[2] The significance of adjusting rates to the level of rates as of January 30, 1996, is that the rates are adjusted to the level of rates approved for BellSouth prior to BellSouth operating under the 575 alternative regulation plan that was reversed by the Porter case.

[3] The ramifications of the effect of the Settlement Agreement approved by Order No. 1999-411 and the resulting rate reductions and refunds are discussed more fully in subsequent sections of this Order.

that the Commission did not require the filing of certain reports in its Orders in Docket No. 95-720-C, the Section 58-9-575 alternative regulation docket, said reports allegedly being required by S.C. Code Ann. Section 58-9-370 (1976).

First, the Consumer Advocate, in our opinion, misconstrues the meaning of Article IX Section 1 of the South Carolina Constitution. There is no language in that section that requires appropriate regulation of a public utility by the Commission. That section of our Constitution states only that the General Assembly shall provide for appropriate regulation of common carriers, publicly owned utilities, and privately owned utilities serving the public as and to the extent required by the public interest. The case law states that the legislature has the power to regulate utility rates, and the legislature has delegated certain authority to regulate utility rates to the Public Service Commission. See Duke Power Company v. S.C. Public Service Commission, 284 S.C. 81, 326 S.E. 2d 395 (1985). Thus, the Commission's authority to regulate utilities comes from the General Assembly. Further, the Commission only has such authority as is granted to it by the Legislature. South Carolina Cable Television Association v. Public Service Commission, supra. S.C. Code Ann. Section 58-9-370 (1976) states that "the Commission may require any telephone utility to file annual reports...and special reports concerning any matter about which the Commission is authorized to inquire...." (Emphasis added). The "may" language denotes a discretionary matter. Therefore, it is up to the Commission as to whether it is appropriate to require reporting by a telecommunications entity. The alternative regulation plan originally approved by the Commission under the auspices of § 58-9-575 was a price regulation plan, not an

earnings regulation plan. The Commission, therefore, did not at that time require that the traditional earnings filings be filed during the course of BellSouth's regulation under the adopted plan.

Further, any allegation of error that BellSouth should have been required to file reports while the 575 Plan was on appeal should have been addressed under the 575 appeal, or, alternatively, a party may have requested that the Commission stay the portion of the 575 Plan that did not require reports during the pendency of the appeal. At this stage, following BellSouth's election of alternative regulation pursuant to § 58-9-576, it is the wrong time to address the fact that reports were not filed while BellSouth operated under the 575 Plan.

Subsequent to the Supreme Court's reversal of the Commission's approval of BellSouth's plan under Section 58-9-575, BellSouth elected to be regulated under the terms and conditions of § 58-9-576. This section also allows a price regulation plan. So far, the Commission has seen no need to exercise its discretion and order BellSouth to file the earnings reports under § 58-9-576. Since § 58-9-576 operates to regulate the Company on a going-forward basis, since all revenues from the three-year operation of the § 58-9-575 Plan have been disgorged and rates reduced to pre-575 Plan levels, and since all rates resulting from the original earnings review are final, there is no duty, constitutional or otherwise, for the Commission to order earnings filings for the three year operation of the § 58-9-575 Plan. See Order No. 2000-030 at 13.

C. Ground Three

The Consumer Advocate next alleges that the Commission improperly ruled on the issues of whether it had authority to order BellSouth to make refunds or rate reductions by asserting the issues of refunds and rate reductions are premature and not ripe for review. This allegation is also without merit.

It is clear to us that the Consumer Advocate put the issues of refunds and going-forward rate reductions and the Commission's ability to grant the requested refunds and rate reductions squarely before this Commission. The Consumer Advocate's Petition in this case requests "appropriate refunds for earnings in excess of a lawful rate of return and rate reductions going forward." Petition for Rehearing and Reconsideration of Consumer Advocate at 1. It is also clear to us that the Consumer Advocate requested exactly what he got - a ruling on refunds and rate reductions to be given on a going-forward basis. We hold that these issues were certainly ripe for a ruling, especially in light of our holding that this Commission had no duty, or indeed, no ability under the provisions of Section 58-9-576 to conduct an earnings review. Waters v. Land Resources Conservation Commission, 321 S.C. 219, 467 S.E.2d 913 (1996) and the other ripeness cases cited by the Consumer Advocate are simply not applicable in the present case. A real and substantial controversy was before the Commission.

In Waters, neighbors to a mining site sought review of a decision to grant a permit to allow mining to proceed at the site. As part of their objection, appellants attempted to assert a procedural due process claim because the law seemingly allowed the mining company to apply to modify, in the future, the existing permit to allow mining on

additional neighboring property with no statutory requirement of notice to the neighbors (appellants). The Supreme Court concluded that this issue was not ripe for determination and declined to address it by reasoning that the mining company had not yet applied for modification nor was there any indication it ever would.

The matter before the Commission is clearly distinguishable from Waters. In Waters, the issue, which the Supreme Court ruled was not ripe, was an anticipated issue, one that the underlying facts to support had not yet occurred. In this case, the Consumer Advocate clearly put the issues of refunds and rate reductions before the Commission by asking for that specific relief in his Petition. Yet now the Consumer Advocate argues that until the Commission determines that over-earnings have in fact occurred, the issues of refunds and rate reductions are not ripe for consideration. By the Consumer Advocate requesting specific relief, the Commission was certainly within its province to determine its ability to grant that relief.

The Consumer Advocate asserts that neither he nor the Commission possesses any data which could either confirm or quantify any amount of over-earnings. According to the Consumer Advocate, only after an earnings review to determine whether over-earnings exist would the legal issues concerning the appropriateness of refunds or going-forward rate reductions be ripe for consideration by the Commission. The Consumer Advocate's position is not sound. The Commission must have the ability to provide the relief requested in a petition prior to undertaking a requested action.

This Commission is well aware that ratemaking is a prospective rather than retroactive process. South Carolina Electric and Gas Company v. Public Service

Commission, 275 S.C. 487, 272 S.E.2d 793 (1980). Since ratemaking is a prospective process, this Commission may only order refunds in certain situations. In the SCE&G case, supra, the Supreme Court of South Carolina recognized that the Commission was only empowered to make refunds in two situations.[4] In one instance, the Commission may order a refund for the difference between new rates under bond and those ultimately found just and reasonable by the Commission. In the other instance, the Commission may order a reparation for a past charge in excess of the applicable rates. If the Commission orders refunds in instances where the Commission is not authorized to order refunds, the Commission engages in impermissible retroactive ratemaking. "As the legislature has expressly authorized refunds in two specific instances, it is both reasonable and logical to conclude that no general authority to direct refunds was intended to be placed in the Commission." 272 S.E.2d at 795.

In South Central Bell Telephone Company v. Louisiana Public Service Commission, 594 So. 357 (1992), the Louisiana Supreme Court, in holding that the Louisiana Public Service Commission exceeded its authority and engaged in retroactive ratemaking when it ordered the utility to refund earnings derived from approved rates, stated

> [g]enerally, retroactive ratemaking occurs when a utility is permitted to recover an additional charge for past losses, or when a utility is required to refund revenues collected pursuant to its lawfully established rate. A commission-made rate furnishes the applicable law for the utility and its customers until a change is made by the commission. Therefore, the utility is entitled to rely on a final rate order until a new rate in

[4] While the SCE&G case addresses statutory provisions which deal with electric utilities, there are corresponding and nearly identical statutes that pertain to telephone utilities. Thus, the rationale expressed in the SCE&G case applies to telephone utilities.

> lieu thereof is fixed by the commission. Consequently, the revenues collected under the lawfully imposed rates become the property of the utility and cannot rightfully be made subject of a refund (Internal citations omitted.).
> 594 So.2d at 358.

Similarly, the Commission may only order prospective rate reductions when it finds after appropriate notice and hearing that approved rates produce a greater or higher level of earnings than was forecast when the rates were set. The remedy in the situation when a determination is made that earnings exceed an authorized level of earnings is to reduce rates prospectively, not to change rates retroactively.

With these general principles of retroactive ratemaking in mind, it is clear under the situation presently before this Commission that this Commission would have no authority to act, either by way of ordering refunds or by way of prospective rate reductions. The Commission has no authority to order refunds in this matter because the rates are at the level of rates set by the Commission as of January 1996. Further, those rates are now final and non-appealable and, therefore, are not subject to refund. (See South Central Bell Telephone Company case where the Louisiana Supreme Court stated "the utility is entitled to rely on a final rate order until a new rate in lieu thereof is fixed by the commission ... the revenues collected under the lawfully imposed rates ... cannot rightfully be made the subject of refund." 594 So.2d at 358.). Those rates are final because the rates challenged by the Consumer Advocate's appeal of Docket No. 95-862-C (the 1995 rate case) have been settled by agreement between the Consumer Advocate and BellSouth and Order No. 1999-411 approving the Settlement Agreement is a final order thus finalizing those rates. Under the principles of retroactive ratemaking, the

Commission cannot go back now and order refunds from those rates, even if over-earnings existed. Any remedy would have to be prospective in nature, and refunds are, by their very nature, a retroactive remedy.

Likewise, the Commission cannot, under the present circumstances surrounding BellSouth's 576 alternative regulation election, order prospective rate reductions. As discussed previously herein, S.C. Code Ann. Section 58-9-576(B)(2) provides that "on the date a LEC notifies the commission of its intent to elect the plan described in this section, existing rates, terms, and conditions for the services provided by the electing LEC contained in then-existing tariffs and contracts are considered just and reasonable." Thus, even if the Commission were to conduct an earnings review and determine that over-earnings occurred, the Commission would be unable to reduce rates prospectively as the rates of BellSouth as of July 14, 1999, are considered just and reasonable by operation of S.C. Code Ann. Section 58-9-576.

In BellSouth Telecommunications, Inc. v. Bissell, 1996 WL 557846 (Tenn.Ct.App.), the former Tennessee Public Service Commission[5] ordered the completion of a previously authorized investigation of BellSouth's earnings after BellSouth had submitted an application for a price regulation plan. In reversing the Tennessee PSC's decision to continue the investigation after BellSouth's application for a

[5] On July 1, 1996, the Tennessee Public Service Commission was replaced by a new, appointed agency called the Tennessee Regulatory Authority. BellSouth Telecommunications, Inc. v. Bissell, 1996 WL 557846 (Tenn.Ct.App.).

price regulation plan, the Tennessee Court of Appeals stated "the PSC's decision to continue the investigation is simply arbitrary, a decision 'that is not based on any course of reasoning or exercise of judgment'." Id. (quoting Jackson Mobilephone v. Tennessee PSC, 876 S.W.2d 106 at 111 (Tenn.App.1993). While the Bissell case is an unpublished opinion, we find the reasoning sound and applicable to this matter. Further, the Jackson Mobilephone case, upon which the Bissell case relies, is a published opinion which espouses the same principle.

To grant the Consumer Advocate's request for an earnings review where the Commission has no authority to grant the relief sought (i.e. refunds and/or rate reductions), would have no purpose and would be irrelevant to BellSouth's rates under its 576 alternative regulation election. Since an earnings review would have no purpose and would have no practical application for the Commission, the ordering of such a review by granting the Consumer Advocate's Petition would be an exercise in futility and would amount to arbitrary action by this Commission. Such a decision would be identical to the former Tennessee PSC's decision which was condemned by the Tennessee Court of Appeals as "simply arbitrary, a decision 'that is not based on any course of reasoning or exercise of judgment'." Id. at 111.

D. Ground Four

The next citation of an alleged error by the Consumer Advocate states that the Commission failed to follow its own precedent, when it held that the ordering of refunds in the present situation would amount to retroactive ratemaking. The Consumer Advocate then recites this Commission's holding in Order No. 94-1229 in Docket No. 93-503-C, in

which we found that BellSouth should make refunds and rate reductions after an "incentive regulation" plan was invalidated by the Supreme Court in South Carolina Cable Television Association v. Public Service Commission, supra. The Consumer Advocate further notes that the Commission may not arbitrarily fail to follow its own precedent, citing Concord Street Neighborhood Association v. Campsen, 309 S.C. 514, 424 S.E. 2d 538 (Ct. App. 1992). For the following reasons, we discern no error in our ruling in the present case.

While the Consumer Advocate argues that the Commission may not arbitrarily fail to follow its own precedent, the South Carolina Supreme Court has also instructed this Commission that a declaration of an existing practice may not be substituted for an evaluation of the evidence and that a previously adopted policy may not furnish the sole basis for the Commission's action. See Hamm v. S.C. Public Service Commission and South Carolina Electric and Gas Company, 309 S.C. 282, 422 S.E. 2d 110 (1992). A reading of both the Concord Street and the Hamm cases instructs us that whatever our holding, we must cite a reasonable basis for that holding that is reviewable by the appellate court.

Recognizing this principle, we hereby note that there are significant differences between the circumstances of the "incentive regulation" plan that preceded Order No. 94-1229 and those in the present case. The Consumer Advocate has specifically referred to the decision that reversed BellSouth's "incentive regulation" plan which was approved by the Commission. The Consumer Advocate asserts that the decisions of the Commission to order refunds and rate reductions following that decision should apply to this

proceeding as well. The Consumer Advocate's contention that the "incentive regulation" plan is precedential for the present matter is incorrect. The two proceedings are clearly distinguishable.

Primarily, the distinguishing factor between the "incentive regulation " case and the present matter is that the rates charged by the utility in the "incentive regulation" case were found unlawful and it was concluded that the utility would not be allowed to keep the money obtained by charging the unlawful rates. Thus a refund was ordered because the rates were found to be unlawful. Nowhere in the present matter have rates been determined to be unlawful. We believe that this difference in circumstances justifies the different holding here from the holding found in Order No. 2000-030.

The original "incentive regulation" plan seen prior to Order No. 94-1229 was an "earnings sharing plan." Under that plan, the Commission would establish a specific rate of return (a "benchmark") for each participating Local Exchange Carrier (LEC). If the earnings of the LEC dropped more than 100 points below the benchmark, then the company could apply for a rate increase. Any earnings up to 100 points above the benchmark would be kept by the LEC. Any earnings between 100 points and 250 points above the benchmark would be divided equally between the LEC and its ratepayers. Any earnings above 250 points above the benchmark would be credited or refunded to the ratepayers. The Supreme Court held that this plan was improper in that it did not meet statutory mandates given to the Commission by the General Assembly. See South Carolina Cable Television Association v. The Public Service Commission of South Carolina, et.al, supra. By agreement, the parties rescinded BellSouth's specific plan.

Subsequently, the Commission ordered an earnings review. Prior to institution of the incentive regulation plan, BellSouth was regulated by the Commission through rate of return regulation, complete with monthly financial reports detailing the earnings of the Company. Since incentive regulation was a form of rate of return regulation, the monthly financial reports continued to be filed by BellSouth. Based on the fact that the incentive regulation plan allowed earnings in excess of a reasonable level of earnings established by the Commission, the Commission had authority to hold an earnings review after the incentive regulation plan was invalidated.

A comparison of the "incentive regulation" plan with the instant matter reveals some distinctions which are dispositive of the Consumer Advocate's position. First, in the "incentive regulation" case, BellSouth's rates and charges were examined in the same docket in which "incentive regulation" was approved and certain rate changes were ordered as a condition precedent to the Commission's approval of the "incentive regulation" plan. Second, in the "incentive regulation" plan, the Commission, without statutory authority, specifically attempted to authorize BellSouth to earn a rate of return which was in excess of the rate of return that was authorized by then-current regulatory law. The Commission set a "reasonable" rate of return and then attempted to authorize BellSouth to keep earnings in excess of that "reasonable" rate of return. After remand to the Commission and ruling by the Commission, the circuit court concluded that the attempt to allow BellSouth to retain earnings in excess of the Commission-approved reasonable level of earnings resulted in "unlawful" earnings. Since "unlawful" earnings were determined under the incentive regulation plan, the refund was ordered.

The situation in the case at bar is drastically different. When the price (not earnings) regulation plan promulgated under Section 58-9-575 was reversed, it was replaced immediately by another price regulation plan elected by BellSouth under § 58-9-576. Since the 575 Plan was a price regulation plan, and not an earnings regulation plan, the Commission had no reason at the time of the origination of the plan to continue to receive the original BellSouth "earnings" filings, as the Company was to be regulated by prices.

The price plan pursuant to Section 58-9-575 called for various BellSouth services to be placed into three separate "baskets" subject to separate pricing controls. The three "baskets" were termed basic services, interconnection services, and non-basic services. Basic services had prices capped for five years, then subject to controlled increases based on a specific formula related to an inflation-based index. Interconnection services had prices capped for three years, then subject to controlled increases based on a specific formula related to an inflation-based index. The non-basic services category had prices limited to an increase of 20% in a twelve-month period. Also, all prices were to equal or exceed the Company's long run incremental cost of providing the service, with some exceptions. The Supreme Court reversed the Commission's approval of this plan because it did not identify competitive and non-competitive services as required by § 58-9-575. See Porter v. South Carolina Public Service Commission, 335 S.C. 157, 515 S.E.2d 923 (1999).

The point, however, is that this 575 Plan was based on prices, therefore, no earnings reports were ordered at that time. On the same day as jurisdiction of the 575

case was returned to the Commission by the circuit court's remittitur of record, BellSouth elected to be regulated under Section 58-9-576, which specifically called for price regulation.

It should also be noted that in the "incentive regulation" case, the Commission attempted to allow BellSouth to earn more than the law allowed, and other parties had no avenue to challenge those earnings. The Commission created an irrefutable presumption that earnings within a certain range (i.e. between 13% and 14%), which was over the authorized rate of return of 13%, would be kept by BellSouth. The Commission allowed this presumption in spite of the fact that the Commission had determined that the 13% represented a reasonable level of earnings. The court concluded that the Commission was not authorized to create such an irrefutable presumption. Thus BellSouth was not allowed to retain those excess earnings from the incentive regulation plan, and the Commission ordered an earnings review to ascertain the extent of those excess, or unauthorized, earnings.

Under the 575 Plan, the Commission did not set any specific rates, nor authorize any specific earnings level or limitation. See, Docket No. 95-720-C, Orders Nos. 96-19, 96-78, and 96-136. The 575 Plan allowed BellSouth, consistent with Section 58-9-575, to change its rates without going through the traditional rate-of-return procedures. Thus the legislatively approved shift in emphasis from rate of return regulation to price regulation is clearly evident. The Supreme Court in Porter v. S.C. Public Service Commission, 335 S.C. 157, 515 S.E.2d 923 (1999) concluded that the Commission failed to comply with certain statutory requirements in approving BellSouth's alternative regulation plan under

575 and in allowing BellSouth to adjust rates by itself without going through the old rate-of-return procedures. Under South Carolina law, this meant that any rates increased under the 575 Plan had to be returned to their prior levels, and any excess over what should have been charged had to be refunded. By Commission Order No. 1999-411, dated June 21, 1999, prices were returned to their January 1996 level and revenues from increased prices under the 575 Plan were disgorged when the Commission approved, with modifications, the May 28, 1999, Settlement Agreement between the Consumer Advocate and BellSouth.

Against this backdrop, the Commission concluded in Order No. 2000-030 that the circumstances of the incentive regulation plan and the Section 58-9-575 Plan were radically different. As we noted in Order No. 2000-030, the focus of the General Assembly regarding regulation of telecommunications companies shifted from earnings to prices, which led to the passage of statutes such as § 58-9-585 and § 58-9-575 in 1994, and § 58-9-576 and § 58-9-280 in 1996. These statutes were the result of a new emphasis on competition in the telecommunications industry.

In any event, because of the above-described differences between the incentive regulation plan and the price regulation plan under Section 58-9-575, we hold that we properly differentiated between the two different situations and held accordingly in Order No. 2000-030. The present case is clearly distinguishable from the incentive regulation case, and we believe we have cited a proper basis for our different holdings in the two different situations.

E. Ground Five

Next, the Consumer Advocate alleges that we erred as a matter of law by stating that we had no authority to order BellSouth to make refunds if it experienced excess earnings during the period of 1996-1998, since retroactive ratemaking would result. The Consumer Advocate also states that we misplaced our reliance on South Carolina Electric & Gas Company v. Public Service Commission, 275 S.C. 487, 272 S.E. 2d 793 (1980) (SCE&G), and on Hamm v. Central States Health and Life Company, 299 S.C. 500, 386 S.E. 2d 250 (1989) (Central States).

The Consumer Advocate would distinguish the SCE&G case from the present case by arguing that there was no appeal of the SCE&G case where the rates were initially established, whereas there is an "appeal" in the case at bar, pursuant to the Consumer Advocate's Petition for Reconsideration. It appears to us that the rule stated in SCE&G is quite applicable to the analysis of the present case. The SCE&G case holds that it is only when a utility charges a rate that has not been approved by the Commission, or if approved by the Commission, is appealed and declared unlawful, that a refund may be authorized. Further, under the holding of the SCE&G case, the Commission may not order refunds to reduce previously approved rates. The Supreme Court clearly stated that action by the Commission to reduce past-approved rates constitutes retroactive ratemaking. 272 S.E.2d at 795. We believe that rule as stated in the SCE&G case is applicable in the present case as discussed extensively in Order No. 2000-030, starting at 13.

The Order approving BellSouth's rates in the earnings Docket, 95-862-C, is now a final Order, and objections to those rates have been resolved through an unappealed Commission Order. (See Order No. 1999-411, dated June 21, 1999.) Thus, we are looking at rates that are lawful pursuant to final orders of the Commission, and under the holding of the SCE&G case, no refunds may be ordered.

With regard to the Central States case, the Consumer Advocate states that refunds are required when a regulated company requests a rate increase approved by the regulating authority, but the increase is timely appealed and found to be unlawfully established. We agree with this statement of the holding in that case, but must state again that the situation in the case at bar differs from the situation presented in the Central States case.

During the period 1996-1998, BellSouth charged rates approved by this Commission in Docket No. 95-862-C. The only exceptions to the rates charged during this period involved those rates that BellSouth changed from the previously approved Commission rates pursuant to its Consumer Price Protection Plan in the 575 case. The Consumer Advocate challenged some of the adjustments used to set rates in Docket No. 95-862-C. The appeal of Docket No. 95-862-C was heard by the Supreme Court in November 1998, resulting in the opinion set forth in Porter v. SC Public Service Commission and BellSouth Telecommunications, Inc., 333 S.C. 12, 507 S.E.2d 328 (1998). The Supreme Court reversed and remanded that case to the Commission to reconsider certain adjustments. Thereafter, the issues were settled as part of the Settlement Agreement between the Consumer Advocate and BellSouth, and the

Settlement Agreement resulted in final rates pursuant to an unappealed Commission order.

The rates charged by BellSouth during the 575 Plan have not been determined to be unlawful by any court. However, the 575 Plan itself was appealed, and the Commission order approving the 575 Plan was reversed. During the pendency of the appeal, BellSouth risked that if it raised rates under the appealed 575 Plan it would have to return all money it collected under the increased rates should the 575 Plan ultimately be found deficient. The risk which BellSouth undertook by raising rates during the appeal of the 575 Plan was limited (1) to having to lower the rates increased pursuant to the 575 Plan to the previously approved and lawful rates established by the Commission in Docket No. 95-862-C and (2) to give up the monies that represented the difference between the approved rates and the rates increased under the 575 Plan.

The Settlement Agreement between BellSouth and the Consumer Advocate, approved by the Commission in Order No. 1999-411, has returned all rate increases to the level of approved rates as of January 1996 and has released the revenues associated with those increases. Thus, BellSouth does not have any unaccounted for monies resulting from rates that could be deemed unlawful. Under the present situation, the Central States case is not applicable since the rates of BellSouth have not been found to be unlawful. Further, the rates cannot now be challenged and determined to be unlawful, as the orders approving those rates have not been appealed and are final orders.

The Consumer Advocate also discusses the "rate increase" requirement in the Central States case and states a belief that the rate increase requirement is satisfied. The

Consumer Advocate states as follows: "Although BellSouth did not specifically seek a rate increase when it sought approval of alternative regulation under S.C. Code Ann. Section 58-9-575, the purpose was clearly aimed at earning higher rates of return than would be allowed under rate of return regulation." Consumer Advocate Petition at 8. Alternative regulation under § 58-8-575 is simply a methodology to regulate by price, not by earnings. A request for alternative regulation pursuant to § 58-9-575 is not the same as a request for a rate increase. A request for alternative regulation under § 58-9-575 seeks price regulation rather than traditional rate of return regulation and seeks to have the competitive market establish the parameters of regulation, including price, that have traditionally been set by the Commission. Such a request for alternative regulation does not equate to a request for, as alleged by the Consumer Advocate, "earning higher rates of return than would be allowed under rate of return regulation." Petition for Rehearing and Reconsideration of Consumer Advocate, p. 8. As the request for statutorily approved alternative regulation does not equate to a request for a rate increase, we do not believe that the necessity for a "rate increase request" under Central States has been met in this case.

We would note parenthetically that in Docket No. 93-503-C, heretofore referenced by the Consumer Advocate as "precedent" for what the Commission should do in this Docket, we held that the "rate increase request" prong of the Central States case was satisfied by the fact that the request by BellSouth for approval of the "incentive regulation" plan was really a request to earn a rate of return higher than the "benchmark" rate of return established by the Commission for the Company. We held that the plan

which allowed BellSouth to earn more than the authorized rate of return was equivalent to a "rate increase request." See Commission Order No. 95-2. There is nothing comparable in the case for alternative regulation under Section 58-9-575. We do not believe that the alternative regulation plan in the case at bar was a "rate increase request," but simply was, by definition, a request to be regulated in an alternative manner to rate of return regulation, pursuant to § 58-9-575.

The Consumer Advocate also states that this case is "no different than the appeals of earlier BellSouth alternative regulation cases where the Commission has ordered refunds on remand." This is simply not the case. The incentive regulation case was based on earnings. The Company's plan was based on what would happen if the Company earned either below or above a "benchmark" rate of return. Subsequently, in later years, the General Assembly passed Sections 58-9-575 and 58-9-576, which allowed the Commission to move towards price regulation, as opposed to rate of return regulation. The Commission approved a plan of alternative regulation for BellSouth under the provisions of § 58-9-575, which created the ability of the Commission to convert its regulation of the Company to non-rate of return methods. The Commission, in turn, approved a price regulation plan, wherein earnings of the Company were not regulated by rate of return regulation.[6] BellSouth later elected a new price regulation plan under the provisions of § 58-9-576.

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[6] Under Section 58-9-575 (C), the Consumer Advocate or any other party could move for a review of any decision adopting an alternative method of regulation for a local exchange telephone utility, if it had concerns about any phase of the alternative regulation plan, once it was adopted under this Section. See testimony of Alphonso Varner in Docket No. 95-720-C. Therefore, the Consumer Advocate had the opportunity to request a review of the Plan in question during the three year implementation of the Plan. However, the Consumer Advocate did not avail itself of the opportunity to do so.

The difficulty with the Consumer Advocate's position is that he would have us superimpose rate of return concepts, like the concept of an earnings review, onto a price regulation template. With the passage of Sections 58-9-575 and 58-9-576, the General Assembly clearly evidences an intent for the Commission to move into alternate plans of regulation, when appropriate. A review of the latter statute, which BellSouth has now elected to follow, fails to provide any mechanism by which the Commission can perform an earnings review, since that statute presupposes price regulation.

For the reasons herein stated, we reject the Consumer Advocate's assertions that our reliance on the SCE&G and Central States cases was misplaced.

F. Ground Six

The next allegation of error propounded by the Consumer Advocate is that in both the majority and dissenting opinions in the Commission's Order No.2000-030, the Commission relied on Commission Order No. 1999-411, which approved a settlement between the Consumer Advocate and BellSouth of issues on remand from the Supreme Court's opinion in Porter v. South Carolina Public Service Commission and BellSouth Telecommunications, Inc., 333 S.C. 12, 507 S.E. 2d 328 (1998). The Consumer Advocate alleges as error that "the rationale of these opinions is that the settlement, the Commission's approval of the settlement, and the lack of an appeal of that approval constitute finality with respect to BellSouth's potential refund liability. Order at 7, 13, and 20." Petition for Rehearing and Reconsideration of Consumer Advocate at 9. The Consumer Advocate asserts that these "findings" are in direct contravention of certain terms of the parties' settlement in that case, which the Commission approved. The

Consumer Advocate then cites language in the agreement which, he alleges, exempts the Consumer Advocate's Petition for Review of BellSouth's 1996-1998 earnings in South Carolina from the settlement. He then cites a clause wherein the merits of the Petition for Review of Earnings are not addressed by the agreement.

The problem with the Consumer Advocate's position is that what the two parties agreed to or did not agree to does not bind the Commission with respect to applying the law to the case at bar. Indeed, although the Settlement Agreement did not settle the Consumer Advocate's petition for an earnings review, the legal effect of the agreement ended the case by virtue of the fact that the resolution of the rate matters foreclosed the requisite "rate" issue needed for refunds pursuant to an earnings review.

The two parties settled the original earnings review appeal of Docket No. 95-862-C by agreeing on various rate matters. The Commission approved the agreement, from which no appeal was taken. Once Order 1999-411 approving the agreement became the law of the case, the rates for the three years of 1996-1998 became approved. The rates became final and became non-appealable. At that point, any necessity for a review of BellSouth's earnings for 1996-1998 ended by operation of law because the rates that produced the earnings for 1996-1998 became final, non-appealable, and lawful. And under the rationale of the SCE&G case, supra, and the Central States case, supra, there must be an unlawful rate to order refunds. (See discussion of SCE&G and Central States beginning at page 23.)

Under the 575 alternative regulation plan, the only increases in rates were to the non-basic services, since all other services were subject to a cap. All that the Commission

could have ordered with regard to the reversed 575 Plan was a return of prices increased under the plan to their pre-plan levels and a disgorgement of the revenues associated with prices increased under the 575 Plan. The Settlement Agreement between the Consumer Advocate and BellSouth accomplished that action by returning rates increased under the 575 Plan to the level of Commission approved rates prior to the 575 Plan and by disgorging revenues associated with the increases under the Plan. This action had the effect of returning matters to the status at the beginning of the plan, thus giving effect to the Supreme Court's reversal of the 575 Plan.

Therefore, no earnings review was necessary, since revenues from increased prices under the plan were disgorged by BellSouth and the rates in effect at BellSouth's election were the Commission approved rates. Regardless of the phraseology in the agreement of the two parties, the legal effect of the Stipulation as a whole was to obviate the necessity for an earnings review, whether that effect was intentional or not. The language referred to by the Consumer Advocate in the Stipulation merely gave the Consumer Advocate the opportunity to continue to seek its earnings review. The agreement does not require the Commission to ignore the law in this case and grant an earnings review.

Certain language quoted by the Consumer Advocate in its Petition for Reconsideration supports this position. The Consumer Advocate quotes a portion of Paragraph 13 of the Settlement Agreement as follows: "The parties specifically agree that the merits, if any, of the petition filed by the Consumer Advocate on April 19, 1999, seeking a review of BellSouth's 1996-1998 earnings, are not addressed by this

Agreement." (emphasis added). We believe that this does not preempt the Commission's ability to dismiss the Consumer Advocate's Petition for an Earnings Review if the law otherwise requires it. The language specifically recognizes that the Petition may or may not have merit. In this case, we held that the Earnings Review Petition has no merit, due to our inability to grant any relief based on the Petition drafted by the Consumer Advocate. The language in the Stipulation does not affect our ability to dismiss the Petition as a matter of law.

The question in this proceeding in determining whether an earnings review is authorized is whether there are any rates being charged by BellSouth that are "unlawful." This is the important question, because if BellSouth is not charging unlawful rates, there is no basis for ordering a refund.[7] The Consumer Advocate does not challenge any specific rate or charge as "unlawful" or improper" in his Petition for Review. Further, there is no pending or available appeal of any rate under the 1995 rate case. See Docket No. 95-862-C. While the Consumer Advocate may think that the approved rates from 1995 would yield too much revenue, he has no avenue to challenge those rates now, as those rates are final rates. The Consumer Advocate, or any other interested party, could have requested this Commission to review the decision adopting an alternative method of regulation for BellSouth and, after a proper showing, to impose on BellSouth "regulatory

[7] The Central States case clearly stands for the proposition that there must be a determination of an unlawful rate before refunds are appropriate. In fact, the Supreme Court, in rejecting Central States' offered argument regarding the SCE&G case, distinguished the SCE&G case from the Central States case by stating "[i]n SCE&G, we held that the PSC had no authority to direct refunds pursuant to past-approved lawful rates. We reasoned that to have empowered the PSC to direct refunds would have permitted them to engage in retroactive ratemaking. Under the present facts [of the Central States case], the rates approved by the Commissioner were found to be *unlawful*. As such, a refund in this instance would not be considered retroactive ratemaking." 386 S.E.2d at 253.

standards consistent with the provisions of this chapter." S.C. Code Ann. Section 58-9-575(C). Had such a request been made and had such a request been found to be meritorious and require action, the Commission could have corrected an alleged "rate problem" on a prospective basis. To make the request after the rates are final and to request that the earnings from those final rates be subjected to scrutiny for possible refunds is clearly asking this Commission to engage in retroactive ratemaking.

The present case is also distinguishable from the cases cited by the Consumer Advocate in its Petition for Reconsideration supporting his assertion that the Commission changed its position after approving the Settlement Agreement, i.e. Porter v. South Carolina Public Service Commission and BellSouth Telecommunications, Inc., 333 S.C. 12, 507 S.E. 2d 328 (1998) and Porter v. South Carolina Public Service Commission and Piedmont Natural Gas Company, 332 S.C. 93, 504 S.E. 2d 320 (1998). In the first case, involving BellSouth Telecommunications, Inc., the issue was whether or not BellSouth had come before the Commission seeking rate relief from losses from its Area Plus service in violation of a Stipulation, when BellSouth had presented its loss information in the context of an earnings review. The Court decided that it had. In the present case, however, there is no similar language present for interpretation. In fact, the language of the settlement agreement specifically recognizes that the Consumer Advocate's Petition for Review may or may not have merit and as such may or may not be approved by the Commission. (See Paragraph 13 of the May 28, 1999 Settlement Agreement, referenced above and approved by Commission Order No. 1999-411, where the language of the Settlement Agreement specifically states "... the merits, if any, of the petition filed by the

Consumer Advocate..." and "...should any regulatory or judicial body determine that any refunds or rate reductions going forward are due as a result of such petition...") The second case, in which Piedmont Gas was involved, is inapposite to the present case as the Stipulation from that case did not contain any qualifying language such as contained in the May 28, 1999, Settlement Agreement as discussed above. The circumstances in both cited cases are differentiable from the circumstances in the present case, and therefore, the cases are inapplicable and are not controlling precedent in the present case.

The Consumer Advocate also asserts the Commission somehow changed its position after having approved the Stipulation on the original earnings review by failing to hold an earnings review of BellSouth's earnings during the years 1996-1998. Again, the Consumer Advocate's own language is telling, when he uses the phrase "merits, if any" and "should any regulatory or judicial body determine that any refunds or rate reductions going forward are due." ¶ 13, Settlement Agreement, dated May 28, 1999, approved by Commission Order No. 1999-411. Even under the Consumer Advocate's own language, if there were no merits to the request for a 1996-98 earnings review, the Commission did not have to grant the Consumer Advocate's Petition. While BellSouth and the Consumer Advocate agreed that the Settlement Agreement did not settle the Consumer Advocate's Petition for Review, the parties did not and could not predetermine how the Commission would rule on the Consumer Advocate's Petition for Review. Once the Petition for Review came before the Commission for consideration, the Petition for Review had to stand or fall on its own. The language of the Settlement Agreement, and subsequent approval of the Settlement Agreement by the Commission, did not prevent

the Commission from dismissing the Consumer Advocate's Petition for Review. There is a difference between a "right to request" and a "right to have" an earnings review. The language of the Settlement Agreement certainly allowed the Consumer Advocate to continue with its petition for an earnings review. However, the Settlement Agreement, and the Commission's approval thereof, did not bind the Commission to grant the petition of the Consumer Advocate requesting an earnings review. The decision of whether an earnings review is appropriate is a decision left to the Commission and as the Commission has explained herein, as well as in Order No. 2000-030, there is no legal basis on which to order an earnings review.

The Consumer Advocate also fails to fully explicate the holding of its cited case Concord Street Neighborhood Association v. Campsen, 309 S.C. 514, 424 S.E. 2d 538 (Ct. App. 1992), when the Consumer Advocate states that the holding of the case is that "the Commission may not arbitrarily fail to follow its own precedent." The case actually states that "an administrative agency is generally not bound by the principle of stare decisis but it cannot act arbitrarily in failing to follow established precedent." Id. at 540. Further, Concord Street goes on to provide that the reasons for various holdings must be stated, and that if a tribunal deviates from a prior decision, it must state reasons therefor. While we believe we have more than adequately explained our actions in Order No. 2000-030, we also do not believe that the Concord Street case is applicable to facts as cited by the Consumer Advocate. The Stipulation simply does not prevent the Commission from dismissing the Petition for Review of BellSouth's 1996-1998 earnings

due to the inability of the Commission to grant the relief sought by the Consumer Advocate under the Petition.

G. Ground Seven

Finally, the Consumer Advocate contends that this Commission erred when it concluded that BellSouth's election of alternative regulation under Section 58-9-576 precludes the ability of the Commission to order reductions of the Company's rates on a going forward basis. This contention is also non-meritorious. First, the Consumer Advocate concludes that the Commission improperly applied § 58-9-576 in a retroactive manner. The Consumer Advocate states:

> The General Assembly could not have intended to enact a statutory provision which would moot the relief sought in pending litigation. The Consumer Advocate's appeal of the Commission's orders granting BellSouth alternative regulation was timely filed on May 5, 1996. Section 58-9-576 did not become effective until May 29, 1996. The Commission cannot construe Section 58-9-576 so as to apply it retroactively to the Consumer Advocate's then pending litigation over BellSouth's alternative regulation plan. Once the Court reversed the Commission's approval of BellSouth's Plan, the Commission was under an obligation to regulate the Company as if it were January 1996.
>
> Petition for Rehearing and Reconsideration of Consumer advocate at 10.

However, the Consumer Advocate cites no precedent for this rather remarkable argument.

There is simply no retroactive application of the statute under the circumstances of the case at bar. We hold that a somewhat different timeline applies. The Supreme Court's order reversing the Commission's approval of the Plan under Section 58-9-575 was returned to the Commission by the Circuit Court on July 14, 1999, by order of the Honorable J. Ernest Kinard, Jr. Thereafter, on that same day and after the Circuit Court's

Order transferring jurisdiction to the Commission had been filed with the Commission, BellSouth filed its notice electing to have its rates, terms, and conditions for its services regulated under the alternative form of regulation set forth in § 58-9-576. The notice reflected that BellSouth was qualified under the statute to elect alternative regulation, and that such regulation would take effect thirty days after the filing of the notice, i.e. on August 13, 1999. The most important matter to consider, however, under this analysis is the language in § 58-9-576(B)(2) which provides: "[o]n the date a LEC (local exchange carrier) notifies the commission of its intent to elect the plan described in this section, existing rates, terms, and conditions for the services provided by the electing LEC contained in the then-existing tariffs and contracts are considered just and reasonable."(emphasis added). Therefore, we held in Order No. 2000-030 that going forward rate reductions were not appropriate, since we had no authority to grant them pursuant to the clear, explicit language of § 58-9-576(B)(2) which makes the rates and charges of the electing LEC, as of the date of notice of election under 576, just and reasonable. The Commission's interpretation is clearly a prospective application of §58-9-576, not a retroactive one. The Commission is a "creature of the General Assembly," and as such, must follow the directives of that body as set out by the statutory law of this State. South Carolina Cable Television Association v. Public Service Commission, supra. We believe we carried out this function in the case at bar.

Although the Consumer Advocate calls in his Petition for Reconsideration for a "practical and reasonable interpretation," he continually calls for an interpretation not justified by the language of the statute. The statute simply does not call for an earnings

review, and thus we were not at liberty to order one. The South Carolina Supreme Court has held that extra requirements may not be engrafted onto legislation which is clear on its face. Lester v. S.C. Workers Comp. Commission, 334 S.C. 557, 514 S.E. 2d 751 (1999).

We believe that Section 58-9-576 is clear on its face and that no earnings review is called for in the statute's provisions. Further, no unreasonable result has occurred by our application of the statute. As stated heretofore, after reversal of BellSouth's § 58-9-575 plan, BellSouth settled its prior earnings review matter and was working under rates established by the Commission. Further, the Company properly disgorged revenues resulting from rate increases made during the three-year period of the 575 plan. Therefore, no absurd result has occurred from the prospective application of § 58-9-576 in this case, and the Commission's interpretation and application of § 58-9-576 is without error.

Because of the reasoning set forth above, the Commission finds the alleged grounds of error contained in the Consumer Advocate's Petition for Reconsideration to be without merit, and the Consumer Advocate Petition for Reconsideration is hereby denied.

III. Petition of MCI

A Petition for Rehearing and Reconsideration was filed by MCI WorldCom Network Services, Inc. (MCI).

A. Grounds One Through Six

First, MCI states its concurrence with arguments (4) through (9) of the Consumer Advocate's Petition. In reply to these allegations, we hereby incorporate herein the paragraphs above which address these issues.

B. Ground Seven

Next, MCI states that the Commission erred in determining that it "has no authority to examine BellSouth's rates based on earnings, nor to grant going forward rate adjustments." Petition for Rehearing and Reconsideration of MCI at 2. Although these issues have been discussed above, MCI goes on to state that the regulatory powers of the Commission must include the ability to modify existing rates on a going-forward basis. MCI then goes on to list various conditions that must be met under Section 58-9-576. None of these conditions contained in § 58-9-576 seems to apply to the authority the Commission possesses with respect to an earnings review in the instant case.

MCI then quotes a portion of S.C. Code Ann. Section 58-9-840 (1976) that states that "nothing contained in Articles 1 through 13 of this chapter shall be construed to divest the Commission of any power now possessed by it to regulate telephone utilities and the duties and powers devolved upon the Commission are in addition to those now imposed by law." Also, MCI quotes a portion of § 58-9-830, which states that "the enumeration of the powers of the Commission as herein set forth shall not be construed to exclude the exercise of any power which the Commission would otherwise have under the provision of law." Finally, the general powers of the Commission under S.C. Ann. Section 58-3-140 (Supp. 1999) are quoted. The first portion of that statute states: "The

Public Service Commission is vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State..."

MCI cites these general statutes of Commission authority for the proposition that the General Assembly "could never have intended for the Commission to relinquish all supervision ...over companies for which alternative regulation has been elected." Petition for Rehearing and Reconsideration of MCI at 4. Further, MCI states its belief that the Commission should have the ability to examine BellSouth's rates and make adjustments as deemed necessary in the future, in accordance with guidelines to be adopted, and "in the exercise of its inherent powers." Petition for Rehearing and Reconsideration of MCI at 4.

The problem with MCI's position that the Commission's general regulatory powers vest the Commission with authority not granted by Section 58-9-576 upon election of alternative regulation under that section is that the General Assembly can withdraw Commission authority by subsequent acts. See Duke Power Company v. South Carolina Public Service Commission, 284 S.C. 81, 326 S.E. 2d 395 (1985), wherein the Supreme Court declared that an Act of the General Assembly had "deprived the Commission of jurisdiction to set the original rates, to disturb the sale terms set by the General Assembly, or to determine that the rate differential resulted in unjust discrimination" in circumstances wherein an investor-owned utility purchased a county-owned utility.

We believe that a similar deprivation has occurred with the General Assembly's passage of Section 58-9-576. That section clearly states that when a local exchange

carrier elects the plan described in the statute, existing rates, terms, and conditions for the services provided by the electing local exchange carrier contained in the then-existing tariffs and contracts are considered just and reasonable. S.C. Code Ann. Section 58-9-576(2) (Supp.1999). The statute makes no provision for an examination of earnings nor for going-forward rate adjustments. It appears to us that some of the powers to review earnings that we had prior to the passage of this statute do not apply when a local exchange carrier elects to be regulated under § 58-9-576.

MCI and other parties argue about "what the General Assembly intended." We point out that we believe that the best evidence of what the General Assembly intended is the plain language of its statutes, including the language used in Section 58-9-576. Section 58-9-576 grants, to any LEC electing under the provisions of 576, a form of alternative regulation by providing the LEC the authority and flexibility to set rates in response to the changing conditions of the telecommunications market. The ability to set rates is controlled by a complaint process provided for in § 58-9-576(5). However, the complaint process clearly applies to rates set after a LEC is under the alternative form of regulation provided for in § 58-9-576. We know that § 58-9-576(5) is intended by the Legislature to apply after the LEC is under 576 alternative regulation because § 58-9-576(2) provides very clearly that that "[o]n the date a LEC notifies the commission of its intent to elect the plan described in this section, existing rates, terms, and conditions for the services provided by the electing LEC contained in the then-existing tariffs and contracts are considered just and reasonable." S.C. Code Ann. Section 58-9-576(2) (Supp.1999). Thus, the plain language of § 58-9-576 and a practical, reasoned reading of

§ 58-9-576 lead this Commission to the conclusion that rates in effect on the date of election of alternative regulation are the effective rates at the start of a 576 alternative regulation plan, and that rates set, including adjustments, after the plan goes into effect are subject to monitoring and oversight by the Commission pursuant to the complaint process authorized by § 58-9-576(5).

As to MCI's assertion that the General Assembly could never have intended for the Commission to relinquish all supervision over companies for which alternative regulation has been elected, the Commission reads Section 58-9-576 as still allowing the Commission oversight of a company operating under 576 alternative regulation. Clearly, the complaint process envisioned and provided for in § 58-9-576(5) contemplates Commission oversight.

The Commission is mindful of the rules of statutory construction that dictate that words used by the General Assembly are to be given their plain, ordinary meaning. See Gilstrap v. South Carolina Budget and Control Board, 310 S.C. 210, 423 S.E.2d 101 (1992) (in construing a statute, the Court shall give clear and unambiguous terms their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand a statute's operation.) Further, there is a basic presumption that the General Assembly has knowledge of previous legislation when later statutes are passed on a related subject. Berkebile v. Outen, 311 S.C. 50, 426 S.E2d 760 (1993). Rules of statutory construction also provide that more recent specific legislation supersedes prior general law. State v. Brown, 312 S.C. 55, 451 S.E.2d 888 (1994). And laws giving specific treatment to a given situation take precedence over general laws on the same

subject. Duke Power Co. v. South Carolina Public Service Commission, 284 S.C. 81, 326 S.E.2d 395 (1985).

Applying these basic rules of statutory construction clearly supports the decision of the Commission in Order No. 2000-030. Section 58-9-576 is certainly "later-enacted" legislation than any of the general sections cited by MCI. Further, § 58-9-576 is specific legislation on a form of regulation, whereas S.C. Code Ann. Section 58-9-840, S.C. Code Ann. Section 58-9-830, and S.C. Code Ann. Section 58-3-140(A) are all general statutes regarding the jurisdiction and powers of the Commission. And, as stated above, the General Assembly can withdraw Commission authority by subsequent acts. See Duke Power Company v. South Carolina Public Service Commission, 284 S.C. 81, 326 S.E.2d 395 (1985). Further, to read § 58-9-576 as requiring a review of earnings as suggested by MCI violates these general rules of statutory construction by reading into the statute a requirement that is not present in the words of the statute. (See Gilstrap v. South Carolina Budget and Control Board, supra.

We would also point out that any "inherent powers" as described by MCI must yield in the face of an unambiguously worded statute. See Santee Cooper Resort, Inc. v. South Carolina Public Service Commission, 298 S.C. 179, 379 S.E. 2d 119 (1989). We simply have no inherent power, after BellSouth's election under Section 58-9-576, to retain jurisdiction to examine BellSouth's rates in order to make rate reductions as MCI suggests this Commission should do. Again, we emphasize that we possess only the authority given to us by the Legislature. See Porter v. South Carolina Public Service Commission, 335 S.C. 923, 515 S.E. 2d 923 (1999).

Lastly, MCI states in its Petition that "[t]he Commission must retain jurisdiction to examine BellSouth's rates and the ability to make adjustments as deemed necessary in the future, in accordance with guidelines to be adopted, and in the exercise of its inherent powers." Petition for Rehearing and Reconsideration of MCI at 4. MCI suggests that BellSouth cannot "qualify" for 576 alternative regulation until such time as the rates have been examined, reductions, if needed, approved, and until the guidelines have been adopted. However, MCI's suggestion does not comport with the language of the statute. As discussed previously in this order, Section 58-9-576 does not provide for any type of rate examination prior to election under the section and specifically provides that the rates in effect on the date of notification of election under 576 are considered just and reasonable. See S.C. Code Ann. Section 58-9-576(2) (Supp. 1999) Further, § 58-9-576(5) presupposes that the guidelines will not be approved at the time of election under 576.

Section 58-9-576(5) states "the LECs shall set rates for all other services on a basis that does not unreasonably discriminate between similarly situated customers; provided, however, that all such rates are subject to a complaint process for abuse of market position in accordance with guidelines to be adopted by the commission." An analysis of tense used in the section indicates that the guidelines will be adopted after an election under 576. The phrase "that all such rates are subject to a complaint process for abuse of market position in accordance with guidelines to be adopted by the commission" (emphasis added) is in the future tense, thus indicative of an occurrence that will happen in the future and after an election under § 58-9-576. Thus MCI's assertion that the Commission must retain jurisdiction to examine BellSouth's rates and make adjustment

in accordance with guidelines to be adopted under § 58-9-576 violates the clear language of the statute.

For the above-stated reasons, we find MCI's Petition is without merit and hereby deny the exceptions contained therein.

IV. Petition of SCCTA

South Carolina Cable Television Association (SCCTA) has also filed a Petition for Rehearing and/or Reconsideration of Order No. 2000-030.

A. Grounds One, Two, and Three

We find that we have already addressed SCCTA's Petition as to the allegations made in Paragraphs 4,5, and 7 of that Petition, and in response to those allegations, we incorporate the discussions above as if set forth fully in this section.

B. Ground Four

Paragraph 6 of SCCTA's Petition sets forth an allegation that we have already addressed herein, however, it bears further discussion. SCCTA alleges that this Commission has erred in interpreting Section 58-9-576 and in concluding that we have no authority to examine rates based on earnings or to grant going forward rate reductions after a LEC elects alternative regulation under § 58-9-576. The specific allegation of error is that the Commission omitted consideration of § 58-9-576(B)(7) which provides that a company is not allowed to elect alternative regulation under § 58-9-576 if it is operating under another alternative regulation plan. Thus, SCCTA states that "the Commission is obligated by law to examine the earnings of BellSouth before allowing the company to withdraw its alternative regulation request under Section 58-9-575 and

before the company can elect to be regulated under Section 58-9-576." Petition for Rehearing and/or Reconsideration of SCCTA at 3.

SCCTA has read requirements into the statute that are not present in the language of the statute. The language of Section 58-9-576(B)(7) states that "any incumbent LEC operating under an alternative regulatory plan approved by the commission before the effective date of this section must adhere to such plan until such plan expires or is terminated by the commission, whichever is sooner." We believe that BellSouth was not operating under an alternative regulation plan at the time of its election under 576. We believe that BellSouth's previous alternate regulation plan filed under § 58-9-575 was "terminated" by the South Carolina Supreme Court in Porter v. South Carolina Public Service Commission, 335 S.C. 157, 515 S.E. 2d 923 (1999), thus rendering the 575 Plan null and void.

In the Porter case, the Court found that we failed to make requisite findings regarding competitive and non-competitive services as required by the statute. The 575 Plan was declared invalid by the Supreme Court, and the Circuit Court Order affirming the Commission's approval of the 575 Plan was reversed. As a result of the Supreme Court's reversal and BellSouth's subsequent election under Section 58-9-576, a question arose as to the status of the 575 Plan.

In addressing the effect of the reversal of the 575 Plan and BellSouth's election under 576, there are a couple of scenarios that may be analyzed. One argument is that BellSouth was never under alternative regulation as contemplated by Section 58-9-576. Another position is that BellSouth was operating under such a plan, but the plan

terminated due to the reversal by the Supreme Court of the Commission and circuit orders approving the 575 Plan.

General precepts of law and South Carolina case law lend support to the position that BellSouth was never under 575 alternative regulation. "The effect of a general and unqualified reversal of a judgment, order, or decree is to nullify it completely and to leave the case standing as if such ... order ... had never been rendered ..." 5 CJS Appeal and Error § 959 (1993). "Reversal of judgment on appeal generally has effect of vacating judgment and leaving case standing as if no judgment had been rendered ..." Brown v. Brown, 331 S.E.2d 793 (S.C. App. 1985); Moore v. North American Van Lines, 462 S.E.2d 275 (1995).

Under the second scenario, the reversal by the Supreme Court "terminated" the 575 Plan. "Terminate" means "1. to bring to an end in space or time; form the end or conclusion of; limit, bound, finish, or conclude 2. to put an end to; stop; cease." Webster's New World Dictionary, Second College Edition (1976). The effect of the Supreme Court's reversal of the Commission-approved 575 Plan of alternative regulation was to clearly terminate that 575 Plan. The reversal "brought an end" to the plan, "finished" the plan, "stopped" the plan, or "ceased" the plan from existing. Whatever definition of "terminate" one uses, the result, under this scenario, is that the 575 Plan was terminated.

Under either scenario discussed above, the result is the same. That is, at the time of BellSouth's election under Section 58-9-576, there was no longer a 575 Plan in existence. The 575 Plan no longer existed either because the effect of the reversal was to

nullify the order approving the plan completely, leaving the case standing as if the order had never been rendered, or because the reversal "terminated" the plan. In either case, BellSouth made a proper election for 576 alternative regulation because the 575 Plan was, in effect, terminated by the Supreme Court's opinion

As discussed previously in this Order, the language of the statute envisioned and expressly provided for a company operating under an alternative regulatory plan at the time of passage of Section 58-9-576 to subsequently seek alternative regulation under 576. This provision is found in § 58-9-576(7), stated above. If the General Assembly had wanted an earnings review prior to a company electing alternative regulation under 576 after operating under another alternative regulatory plan, the General Assembly would have provided for such an earnings review in the statute. See Estate of Guide v. Spooner, supra. (If legislature had intended certain result by or in the statute, it would have said so in the statute.)

However, Section 58-9-576 does not provide for an earnings review "before the company can be regulated under § 58-9-576" as proposed by the SCCTA. The position of the SCCTA invites this Commission to add a requirement (i.e. an earnings review) to an election for 576 alternative regulation that is just not in the statute. As noted throughout this Order, this Commission has only the authority granted to it by the legislature. South Carolina Cable Television Association v. Public Service Commission, supra. Since this Commission only has the authority which the Legislature specifically provides by statute, this Commission is not empowered to add additional requirements, such as that proposed by SCCTA, to the 576 election.

The SCCTA asserts that under the Commission's analysis "BellSouth will be allowed to declare its rates just and reasonable even though the Supreme Court has held those rates to have been a product of an unlawful plan." Petition for Rehearing and/or Reconsideration of SCCTA at 3. The SCCTA also proposes that the Commission's reasoning renders Section 58-9-576 "unconstitutional in violation of Article IX, Section 1 of the South Carolina Constitution because [the Commission's] interpretation would not provide for the appropriate regulation of a public utility. Petition for Rehearing and/or Reconsideration of SCCTA at 4. Further, the SCCTA argues that "to allow BellSouth to circumvent state law by electing regulation under Section 58-9-576 without reviewing the company's earnings from 1996 through 1998 would be sanctioning unlawful operation without proper regulatory oversight required by state law." Id.

These additional arguments of the SCCTA are also groundless. The Commission's interpretation of Section 58-9-576 does not, as alleged by the SCCTA, allow BellSouth "to declare its rates just and reasonable even though the Supreme Court has held those rates to have been a product of an unlawful plan." In the first place, BellSouth has not declared its rates just and reasonable. As previously explained in this Order, BellSouth, after the reversal of the 575 Plan, reduced all rates increased under the 575 Plan to pre-575 Plan levels as of January 30, 1996. The pre-575 Plan levels became final with Order No. 1999-411, Docket No. 95-862-C. Therefore, the rates that were effective at BellSouth's election under § 58-9-576 were rates approved by the Commission. (See discussion found under heading of Ground One of the Petition for Rehearing Reconsideration of the Consumer Advocate.) As the rates were the

Commission approved rates, the rates were not the product of an unlawful plan as alleged.

The Commission's reasoning does not, as suggested by SCCTA, render Section 58-9-576 "unconstitutional in violation of Article IX, Section 1 of the South Carolina Constitution. (See discussion on pp. 9-11 above.) Nor does the Commission's reasoning "sanction unlawful operation without proper regulatory oversight" by allowing "BellSouth to circumvent state law by electing regulation under Section 58-9-576 without reviewing the company's earnings from 1996 through 1998." Petition for Rehearing and/or Reconsideration of SCCTA at 4. The rates, which became effective for BellSouth's 576 election as of July 14, 1999, are the rates approved in Docket No. 1995-862-C and which have become final rates through the finality of Order No. 1999-411. Also, during the pendency of the appeal of the 575 Plan, any party could have requested the Commission to review its decision adopting an alternative regulatory method for BellSouth if the party had concerns about any phase of the alternative regulation plan. See S.C. Code Ann. Section 58-5-575(C). The proper time to challenge rates, and earnings produced therefrom, under the 575 Plan was during the time when the 575 Plan was in operation. Even if the Commission had denied a challenge to the plan, a party would have preserved its challenge by appealing a denial. At this point, after the 575 Plan is terminated and an election made pursuant to 576, the practical effect of a challenge to earnings amounts to a request that the Commission ignore the intent of the legislature in enacting § 58-9-576 and to engage in retroactive ratemaking. And, as stated herein, this is something that the Commission will not do.

Therefore, for the reasons set forth in the preceding section, which incorporates the reasoning expressed in the previous sections of this Order, SCCTA's Petition is found to be without merit and is denied.

V. Petition of AT&T

AT&T has also filed a Petition to Reconsider Order No. 2000-030.

A. Ground One

First, AT&T cites as error the language in Order No. 2000-030 which explains that the Commission can neither grant refunds, nor grant going-forward rate reductions. Again, we deny AT&T's allegation of error on this basis as we have discussed these allegations in other paragraphs above and reassert the previous explanations as if set forth fully here.

B. Ground Two

Next, AT&T alleges that Order No. 2000-030 treats the Supreme Court's Porter decision as a complete nullity, and in effect, ignores the ruling of the Supreme Court. Petition for Rehearing and Reconsideration of AT&T at 2. AT&T's assertion is simply not the case here. The Consumer Advocate's Petition for an Earnings Review was filed as a result of the Supreme Court's decision. In considering the Consumer Advocate's Petition, it was this Commission's function to determine what legal relief, if any, could be granted if the requested earnings review was approved. Order No. 2000-030 extensively analyzed the situation resulting from the Supreme Court's reversal of the Commission-approved 575 Plan and also considered the effect of that reversal on the three year period of 1996-98. As was stated in that Order, after reversal of the 575 Plan,

the Commission ordered that BellSouth reduce its rates that had been previously increased to the levels approved in the final Order in the original earnings Docket, as well as ordered that BellSouth eliminate the related revenue collected by virtue of those increases. Order No. 1999-411 stated that, pursuant to those actions, BellSouth's rates that had been increased under the 575 Plan were returned to their previous levels, which were approved in the original earnings docket. Therefore, the Commission did not treat the Supreme Court's Porter decision as a nullity, but, in fact, fully analyzed the post-575 Plan circumstances and ordered a reduction in rates. Accordingly, no further rate adjustments need to be made pursuant to the Consumer Advocate's Petition for a rate review.

AT&T suggests that the rate adjustments approved by the Commission following reversal of the 575 Plan are only the beginning of refunds for the years of 1996-1998. AT&T further suggests the novel approach of a "*nunc pro tunc* rate reduction." Petition for Rehearing and Reconsideration of AT&T at 4-5. Further, AT&T suggests that a "*nunc pro tunc* rate reduction" does not violate the principle prohibiting retroactive ratemaking.

First, the Commission notes that AT&T cites no legal authority for the unique suggestion of a "*nunc pro tunc* rate reduction." Second, the Commission takes note that "*nunc pro tunc*" means "[n]ow for then. A phrase applied to acts allowed to be done after the time when they should have been done, with a retroactive effect, *i.e.* with the same effect as regularly done." *Black's Law Dictionary*, 6th Ed. (1990).

By its very wording, the suggestion of a "*nunc pro tunc* rate reduction" smacks of retroactive ratemaking. This unorthodox concept clearly envisions reviewing rates at the

present for retroactive application. In our opinion, AT&T's suggestion of a "*nunc pro tunc* rate reduction" certainly does "violence" to the principle prohibiting retroactive ratemaking. AT&T's suggestion specifically proposes, and in fact encourages, the Commission to do the very thing that is proscribed, i.e. engage in retroactive ratemaking.

C. Ground Three

AT&T also compares the present case with the incentive regulation situation found in Docket No. 93-503-C as embodied in South Carolina Cable Television Association v. Public Service Commission, supra. As discussed above, the incentive regulation plan is easily and obviously distinguishable from the alternative regulation plan found in Section 58-9-576. Because of the differences in the two cases, as discussed more fully in previous sections and which are incorporated herein, we cannot conclude that the Supreme Court's guidance in the South Carolina Cable Television Association case is applicable to the case before us.

D. Ground Four

AT&T also mixes rate of return concepts with alternative regulation concepts. The clear language of both Sections 58-9-575 and 58-9-576 shows that the General Assembly intended for the Commission to take a new direction in regulation of telecommunications utilities. We find that the will of the General Assembly as expressed through its statutes must govern our actions. AT&T entirely misses the point when it states that because BellSouth obtained an unlawful alternative regulation plan, "which short-circuited the usual rate review process," its earnings during those years escape entirely the lawful review process. The earnings review completed prior to the institution

of the § 58-9-575 alternative regulation plan, as corrected by Order No. 1999-411, set proper rates for BellSouth, especially in consideration of the fact that BellSouth disgorged revenues associated with increases made during the period when the 575 Plan was in effect. BellSouth's earnings prior to institution of that plan were subject to full review by the Commission and by the Supreme Court. Therefore, no refunds or going-forward rate reductions were appropriate, in accordance with the reasoning stated above.

E. Ground Five

Finally, AT&T states a belief that "corrected" rates from the three-year period of the Section 58-9-575 Plan should segue into the rates "considered just and reasonable" under § 58-9-576, "rather than the stale expression of a three-year dormant regulatory process." The problem with this statement is that there is no statute which allows such a process, and, in fact, the existing pertinent statute seems to prohibit it. Section 58-9-576 "says what it says," i.e., that "on the date a LEC notifies the commission of its intent to elect the plan described in this section, existing rates, terms and conditions for the services provided by the electing LEC contained in the then-existing tariffs and contracts are considered just and reasonable." The statute specifically states that the existing rates, terms and conditions, contained in the then-existing tariffs and contracts are considered just and reasonable. The section could not be more specific in directing the Commission to look at conditions at the time of the election of the § 58-9-576 plan. Again, no "corrected" rates are contemplated by § 58-9-576.

AT&T clearly disagrees with the result reached by the Commission in Order No. 2000-030. However, the grounds submitted by AT&T for Reconsideration of Order No.

2000-030 have been thoroughly considered within this order and found to be without merit. Therefore, AT&T's Petition must be, and is, denied.

VI. CONCLUSION

The parties filing Petitions for Reconsideration and/or Rehearing in this matter ask this Commission to ignore the plain meaning of statutes passed by the General Assembly and to misapply the case law of this state. See South Carolina Cable Television Association v. Public Service Commission, supra. This Commission must follow the General Assembly's directives and the established case law. For the reasons set forth in this order, all Petitions for Rehearing and/or Reconsideration of Order No. 2000-030 submitted in this matter are hereby denied.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)